

Message Text

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ACTION OES-06

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FM AMEMBASSY BRASILIA

TO SECSTATE WASHDC NIACT IMMEDIATE 0303

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E.O. 11652: N/A

TAGS: EFIS BR PLOS

SUBJECT: US-BRAZIL SHRIMP AGREEMENT

REF: (A) BRASILIA 1544 (B) BRASILIA 1538

1. THERE FOLLOWS FOR DEPT. APPROVAL TEXT OF AGREEMENT
WITH BRAZIL ON SHRIMP. TEXT OF ANNEX II AND NOTES
EXTENDING EXISTING AGREEMENT ON INTERIM BASIS WILL
FOLLOW BY SEPTEL.

2. THE PARTIES TO THIS AGREEMENT,
CONSIDERING THAT THE AGREEMENT BETWEEN THEM CONCERN-
ING SHRIMP, SIGNED AT BRASILIA ON MARCH 14, 1975,
WILL SOON EXPIRE AND DESIRING TO CONTINUE THEIR
COOPERATION IN RESPECT OF SHRIMP RESOURCES;
NOTING THAT LEGISLATION ADOPTED BY THE FEDERATIVE
REPUBLIC OF BRAZIL PROVIDES

- THAT ITS TERRITORIAL SEA EXTENDS TO A DISTANCE
OF 200 NAUTICAL MILES FROM ITS COAST,

- THAT THE EXPLOITATION OF LIVING RESOURCES
WITHIN THE BRAZILIAN TERRITORIAL SEA IS
RESERVED TO BRAZILIAN FISHING VESSELS,

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- THAT EXCEPTIONS TO THIS CAN BE GRANTED BY
INTERNATIONAL AGREEMENT;

NOTING FURTHER THAT THE GOVERNMENT OF THE FEDERATIVE
REPUBLIC OF BRAZIL IS WILLING TO ALLOW UNITED STATES
SHRIMP FISHING VESSELS TO OPERATE IN THE
AREA DEFINED IN, AND IN ACCORDANCE TO THE TERMS OF,

THIS AGREEMENT, FOR THE DURATION OF THIS AGREEMENT, DURING WHICH THE BRAZILIAN FISHING INDUSTRY IS UNABLE TO FULLY UTILIZE THE SHRIMP OF THE AREA AND DURING WHICH ARRANGEMENTS OF A DIFFERENT NATURE CAN BE SOUGHT IN ORDER TO HELP ACHIEVE THE FULL UTILIZATION OF THE LIVING RESOURCES OF THE AREA BY THE BRAZILIAN FISHING INDUSTRY, AND NOTING THAT THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL CONSIDERS THAT THERE IS NO UNIVERSALLY ACCEPTED LIMITS FOR THE DELIMITATION OF THE TERRITORIAL SEA;

NOTING ALSO THAT THE FISHERY CONSERVATION AND MANAGEMENT ACT OF 1976 ENACTED BY THE UNITED STATES OF AMERICA PROVIDES THAT THE GOVERNMENT OF THE UNITED STATES OF AMERICA WILL EXERCISE AND RECOGNIZE FISHERY CONSERVATION AND MANAGEMENT AUTHORITY AS SET FORTH THEREIN IN A ZONE EXTENDING 200 NAUTICAL MILES FROM ITS COAST,

NOTING FURTHER THAT THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONSIDERS THAT IT IS NOT OBLIGATED UNDER INTERNATIONAL LAW TO RECOGNIZE TERRITORIAL SEAS CLAIMS OF MORE THAN THREE NAUTICAL MILES FROM THE COAST.

RECOGNIZING THAT THE DIFFERENCE IN THE RESPECTIVE JURIDICAL POSITIONS OF THE PARTIES MAY GIVE RISE TO CERTAIN PROBLEMS RELATING TO THE CONDUCT OF CERTAIN SHRIMP FISHERIES;

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CONSIDERING THE TRADITION OF BOTH PARTIES FOR RESOLVING INTERNATIONAL DIFFERENCES BY HAVING RESOURCE TO NEGOTIATION;

CONSIDERING THAT, WHILE GENERAL INTERNATIONAL SOLUTION TO ISSUES OF MARITIME JURISDICTION ARE BEING DEVELOPED AND UNTIL MORE ADEQUATE INFORMATION REGARDING THE SHRIMP FISHERIES IS AVAILABLE, IT IS DESIRABLE TO MAINTAIN ARRANGEMENTS WHICH TAKE INTO ACCOUNT, INTER ALIA, THEIR MUTUAL INTEREST IN THE CONSERVATION OF THE SHRIMP RESOURCES OF THE AREA;

MINDFUL OF THE COMMON DESIRE OF THE TWO GOVERNMENTS TO DEVELOP FURTHER COOPERATION BETWEEN THEIR SCIENTISTS WITH RESPECT TO EXPANDING SCIENTIFIC KNOWLEDGE CONCERNING THE LIVING RESOURCES OF THE SEA AND TO ENCOURAGE JOINT VENTURES FOR THE DEVELOPMENT OF SHRIMP RESOURCES;

HAVING ARRIVED AT AN ACCOMMODATION FOR THE CONDUCT OF SHRIMP FISHERIES WITHOUT PREJUDICE TO EITHER GOVERNMENT'S JURIDICAL POSITION CONCERNING THE EXTENT OF TERRITORIAL SEAS OR FISHERIES JURISDICTION UNDER INTERNATIONAL LAW,
HAVE AGREED AS FOLLOWS:

ARTICLE I

THIS AGREEMENT SHALL APPLY TO THE FISHERY TO THE FISHERY OF SHRIMP (PENAEUS (M) DUORARUM NOTIALIS, PENAEUS BRASILIENSIS AND PENAEUS (M) AZTECUS SUBTILIS)
IN AN AREA HEREINAFTER REFERRED TO AS THE "AREA OF THE AGREEMENT", DEFINED AS FOLLOWS: THE WATERS WITHIN 200 NAUTICAL MILES OFF THE COAST OF BRAZIL HAVING THE ISOBATH OF THIRTY (30) METERS AS THE SOUTH-WEST LIMIT AND THE LATITUDE OF ONE DEGREE UNCLASSIFIED

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NORTH (1 DEGREE N) AS THE SOUTHERN LIMIT AND FORTY-SEVEN DEGREES AND THIRTY MINUTES WEST (47 DEGREES 30'W) LONGITUDE AS THE EASTERN LIMIT. EXCEPT IN THE AREA ABOVE DEFINED, FISHING FOR SHRIMP BY VESSELS OF THE UNITED STATES OF AMERICA IN ANY OTHER AREA WITHIN 200 NAUTICAL MILES OFF THE COAST OF BRAZIL IS PROHIBITED AND SHALL BE SUBJECT TO THE PENALTIES PROVIDED FOR IN THE BRAZILIAN LEGISLATION.

ARTICLE II

(1) TAKING INTO ACCOUNT THEIR COMMON CONCERN WITH PREVENTING THE DEPLETION OF THE SHRIMP STOCKS IN THE AREA OF THE AGREEMENT AND THE SUBSTANTIAL DIFFERENCE IN THE STAGES OF DEVELOPMENT OF THEIR RESPECTIVE FISHING FLEETS, WHICH RESULTS CORRESPONDINGLY IN DIFFERENT KINDS OF IMPACT ON THE RESOURCES, THE TWO PARTIES AGREE THAT, DURING THE TERM OF THIS AGREEMENT, THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL IS TO APPLY THE FISHERIES MANAGEMENT AND CONSERVATION MEASURES SET FORTH IN ANNEX I TO THIS AGREEMENT AND THE UNITED STATES SHRIMP FISHING VESSELS SHALL BE SUBJECT TO THE MEASURES SET FORTH IN THE ANNEX II OF THIS AGREEMENT.
(2) THE MEASURES SET FORTH IN THE ANNEXES MAY BE CHANGED BY AGREEMENT OF THE PARTIES THROUGH CONSULTATION PURSUANT TO ARTICLE X.

ARTICLE III

(1) INFORMATION ON CATCH AND EFFORT AND BIOLOGICAL DATA RELATING TO SHRIMP FISHERIES IN THE AREA OF

THE AGREEMENT SHALL BE COLLECTED AND EXCHANGED, AS APPROPRIATE, BY THE PARTIES. UNLESS THE PARTIES

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DECIDED OTHERWISE, SUCH EXCHANGE OF INFORMATION SHALL BE MADE IN ACCORDANCE WITH THE PROCEDURE DESCRIBED IN THIS ARTICLE.

(2) EACH VESSEL FISHING UNDER THIS AGREEMENT SHALL MAINTAIN A FISHING LOG, ACCORDING TO COMMONLY AGREED MODEL. SUCH FISHING LOGS SHALL BE DELIVERED QUARTERLY THROUGH THE GOVERNMENT OF THE UNITED STATES OF AMERICA TO THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL WHICH SHALL USE THE DATA THEREIN CONTAINED, AND OTHER INFORMATION IT OBTAINS ABOUT THE AREA OF THE AGREEMENT, TO PREPARE REPORTS ON THE FISHING CONDITIONS IN THAT AREA, WHICH SHALL BE TRANSMITTED PERIODICALLY TO THE GOVERNMENT OF THE UNITED STATES OF AMERICA AS APPROPRIATE.

(3) THE PARTIES CONSIDER IT DESIRABLE TO EXPAND RESEARCH ON SHRIMP, ON A NATIONAL BASIS AS WELL AS IN THE FORM OF COORDINATED RESEARCH, ACCORDING TO A PROGRAM DEVELOPED BY THE SCIENTISTS OF BOTH PARTIES. SCIENTISTS DULY APPOINTED BY THE TWO PARTIES SHALL MEET PERIODICALLY, BUT AT LEAST ONCE DURING 1977, FOR THE PURPOSE OF EXCHANGING SCIENTIFIC DATA, PUBLICATIONS, AND KNOWLEDGE OF SHRIMP STOCKS AND FISHING EFFORT IN THE AREA OF THE AGREEMENT, AND TO EXCHANGE INFORMATION ON RESEARCH PLANS
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AND TO DEVELOP AN EXPANDED COORDINATED RESEARCH PROGRAM, WHICH SHOULD INCLUDE, INTER ALIA, SUCH EXPLORATORY FISHING AND SCIENTIFIC TRAINING ACTIVITIES AS MAY BE FEASIBLE. THE TWO GOVERNMENTS WILL PROCEED IN DUE TIME TO AN EXCHANGE OF NOTES CONCERNING THE IMPLEMENTATION OF THIS EXPANDED PROGRAM.

ARTICLE IV

(1) THE GOVERNMENT OF THE UNITED STATES OF AMERICA SHALL TRANSMIT TO THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL, ON BEHALF OF THE UNITED STATES SHRIMP FISHING VESSEL OWNERS CONCERNED, THE FOLLOWING INFORMATION IN RESPECT OF EACH VESSEL THAT APPLIES TO FISH FOR SHRIMP IN THE AREA OF THE AGREEMENT, ACCOMPANIED BY ADVANCE PAYMENT OF THE AMOUNT REQUIRED AS PROVIDED FOR IN PARAGRAPH ONE OF ARTICLE VI OF THIS AGREEMENT:

A) NAME OF VESSEL;
B) NAME AND BUSINESS ADDRESS OF THE OWNER;
C) OFFICIAL NUMBER AND AGREEMENT NUMBER;
D) PORT OF REGISTRY AND USUAL PORT OF OPERATION OF THE VESSEL;
E) A PHOTOGRAPH OF THE VESSEL, ACCCOMPANIED BY ITS GENERAL DESCRIPTION, INCLUDING COLORS OF SIDE, DECK HOUSE, TOP OF HOUSE AND TRIM, AND SPEED AND HORSE POWER OF THE MAIN ENGINE;
F) RADIO FREQUENCY AND RADIO CALL LETTERS FOR THE ESTABLISHMENT OF COMMUNICATIONS;
G) METHODS AND EQUIPMENT EMPLOYED FOR CATCHING; AND
H) OTHER INFORMATION NECESSARY FOR THE IDENTIFICATION AND OTHER ENFORCEMENT FUNCTIONS IN IMPLEMENTATION OF THIS AGREEMENT.

(2) THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF UNCLASSIFIED

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BRAZIL SHALL VERIFY WHETHER IT IS COMPLETE AND IN GOOD ORDER, AND SHALL INFORM THE GOVERNMENT OF THE UNITED STATES OF AMERICA WITHIN 20 DAYS AFTER OFFICIAL RECEIPT OF THE INFORMATION OF THE VESSELS FOUND TO COMPLY OR NOT TO COMPLY WITH THE REQUIREMENTS OF THIS AGREEMENT, AS WELL AS OF THOSE THAT MAY REQUIRE FURTHER CONSULTATION AMONG THE PARTIES.

(3) THE GOVERNMENT OF THE UNITED STATES OF AMERICA,

UPON RECEIPT OF THE OFFICIAL NOTIFICATION FROM THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL, SHALL INFORM THE SHRIMP FISHING VESSEL OWNER CONCERNED THAT THE VESSEL MAY START FISHING OPERATIONS IN THE AREA OF THE AGREEMENT, AND SHALL INFORM HIM OF THE APPLICABLE REQUIREMENTS OF THE AGREEMENT.

(4) THE INFORMATION REFERRED TO IN THE PRESENT ARTICLE SHALL BE ACCCOMPANIED BY A TRANSLATION IN THE PORTUGUESE LANGUAGE.

(5) EACH UNITED STATES SHRIMP FISHING VESSEL ENGAGED IN FISHING ACTIVITIES PURSUANT TO THIS AGREEMENT SHALL DISPLAY AN IDENTIFICATION SIGN AGREED UPON BETWEEN THE PARTIES.

ARTICLE V

(1) THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL SHALL CARRY OUT SUCH ENFORCEMENT MEASURES AS MAY BE NECESSARY TO ENSURE THAT THE CONDUCT OF SHRIMP FISHERIES BY UNITED STATES FISHING VESSELS CONFRMS WITH THE PROVISIONS OF THIS AGREEMENT.

(2) A DULY AUTHORIZED OFFICIAL OF BRAZIL, IN EXERCISING THE RESPONSIBILITY REFERRED TO IN PARAGRAPH ONE OF THIS ARTICLE, IF HE HAS REASONABLE CAUSE TO BELIEVE THAT A UNITED STATES SHRIMP

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FISHING VESSEL IS FISHING IN VIOLATION OF ANY PROVISION OF THIS AGREEMENT, MAY STOP, BOARD AND SEARCH SUCH VESSEL. SUCH ACTION SHALL NOT UNDULY HINDER FISHING OPERATIONS. WHEN, AFTER BOARDING, OR BOARDING AND SEARCHING A VESSEL, THE OFFICIAL CONTINUES TO HAVE REASONABLE CAUSE TO BELIEVE THAT ANY PROVISION OF THIS AGREEMENT HAS BEEN VIOLATED, HE MAY SEIZE AND DETAIN SUCH VESSEL. IN THE CASE OF A BOARDING OR SEIZURE AND DETENTION OF A UNITED STATES VESSEL, THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL SHALL PROMPTLY INFORM THE GOVERNMENT OF THE UNITED STATES OF AMERICA OF ITS ACTION.

(3) ARRESTED VESSELS AND THEIR CREWS SHALL BE PROMPTLY RELEASED UPON THE PAYMENT OF THE SUMS REQUIRED UNDER PARAGRAPH 2 OF ARTICLE VI OF THIS AGREEMENT. IT IS UNDERSTOOD THAT BRAZILIAN LAW DOES NOT PROVIDE FOR IMPRISONMENT OR ANY OTHER FORM OF CORPORAL PUNISHMENT FOR VIOLATIONS OF FISHERIES REGULATIONS.

(4) IF THE NATURE OF THE VIOLATION WARRANTS IT,
AND AFTER CARRYING OUT THE PROVISION OF ARTICLE X,
VESSELS MAY ALSO SUFFER FORFEITURE OF THAT PART
OF THE CATCH DETERMINED TO BE TAKEN ILLEGALLY,
AND FORFEITURE OF THE FISHING GEAR.

(5) THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF
BRAZIL SHALL PROMPTLY INFORM THE GOVERNMENT OF THE
UNITED STATES OF AMERICA IN PARTICULAR OF THE

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DISPOSITION OF ANY CASE OF AN UNUSUAL NATURE
INVOLVING SEIZURE AND DETENTION OF A UNITED STATES
VESSEL.

(6) THE GOVERNMENT OF THE UNITED STATES OF AMERICA
SHALL, TO THE MAXIMUM EXTENT PERMISSIBLE UNDER ITS
LAWS, SEEK TO ENSURE THAT UNITED STATES SHRIMP
VESSELS COMPLY WITH THE REQUIREMENTS OF THIS AGREEMENT.

ARTICLE VI

(1) EACH UNITED STATES SHRIMP FISHING VESSEL OWNER
THAT APPLIES TO FISH UNDER THIS AGREEMENT SHALL PAY
TO THE FEDERATIVE REPUBLIC OF BRAZIL THE SUM OF
US\$3600.00 PER VESSEL, WHICH SHALL BE FORWARDED
TO THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF
BRAZIL AT THE TIME THE GOVERNMENT OF THE UNITED STATES
OF AMERICA TRANSMITS THE INFORMATION REFERRED TO
IN PARAGRAPH ONE OF ARTICLE IV. IF THE GOVERNMENT
OF THE FEDERATIVE REPUBLIC OF BRAZIL FINDS THAT
ANY PARTICULAR VESSEL DOES NOT COMPLY WITH THE

REQUIREMENTS OF THIS AGREEMENT, SUCH SUM SHALL BE RETURNED IMMEDIATELY TO THE GOVERNMENT OF THE UNITED STATES OF AMERICA FOR TRANSMISSION TO THE VESSEL OWNER CONCERNED.

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(2) IN THE EVENT A UNITED STATES SHRIMP FISHING VESSEL IS SEIZED AND DETAINED BY THE APPROPRIATE AUTHORITIES OF THE FEDERATIVE REPUBLIC OF BRAZIL FOR A VIOLATION OF ANY OF THE PROVISIONS OF THIS AGREEMENT, THE OWNER OF SUCH VESSEL SHALL PAY TO THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL FOR EXPENSES INCURRED IN CARRYING OUT THE SEIZURE AND DETENTION THE SUM OF US\$500 FOR EACH DAY DURING WHICH THE VESSEL IS BEING ESCORTED TO PORT AND THE SUM OF US\$200 FOR EACH DAY WHILE THE VESSEL IS IN PORT. FINES AS PROVIDED BY BRAZILIAN LAW SHALL BE IMPOSED IF SUCH SUMS ARE NOT PAID WITHIN 10 WORKING DAYS OF THE ARRIVAL OF SUCH VESSEL IN PORT.

ARTICLE VII

THE IMPLEMENTATION OF THIS AGREEMENT MAY BE REVIEWED AT THE REQUEST OF EITHER PARTY SIX MONTHS AFTER THE DATE ON WHICH THIS AGREEMENT BECOMES EFFECTIVE.

ARTICLE VIII

THE PARTIES SHALL COOPERATE IN THE DEVELOPMENT OF THEIR FISHING INDUSTRIES; THE EXPANSION OF THE INTERNATIONAL TRADE OF FISHERY PRODUCTS; THE IMPROVEMENT OF STORAGE, TRANSPORTATION AND MARKETING OF FISHERY PRODUCTS; AND THE ENCOURAGEMENT OF JOINT VENTURES BETWEEN THE FISHING INDUSTRIES OF THE TWO PARTIES.

ARTICLE IX

NOTHING CONTAINED IN THIS AGREEMENT SHALL BE INTERPRETED AS PREJUDICING THE POSITION OF EITHER PARTY REGARDING THE MATTER OF TERRITORIAL SEAS OR FISHERIES JURISDICTION UNDER INTERNATIONAL LAW.

ARTICLE X

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ANY PROBLEM CONERNING THE INTERPRETATION AND

IMPLEMENTATION OF THIS AGREEMENT SHALL BE RESOLVED
THROUGH DIPLOMATIC CHANNELS.

ARTICLE XI

THIS AGREEMENT SHALL ENTER INTO FORCE UPON SIGNATURE
AND SHALL REMAIN IN FORCE UNTIL DECEMBER 31, 1977.

IN WITNESS WHEREOF THE UNDERSIGNED REPRESENTATIVES
HAVE SIGNED THE PRESENT AGREEMENT AND AFFIXED
THERETO THEIR SEALS.

DONE AT BRASILIA, THIS.....

OF 1977, IN DUPLICATE IN THE ENGLISH AND PORTUGUESE
LANGUAGES, BOTH TEXTS BEING EQUALLY AUTHENTIC.

FOR THE GOVERNMENT OF FOR THE GOVERNMENT OF
UNITED STATES OF AMERICA THE FEDERATIVE REPUBLIC
OF BRAZIL

ANNEX I

A) PROHIBITION OF SHRIMP FISHING ACTIVITIES, FOR
CONSERVATION PURPOSES, IN SPAWNING AND BREEDING
AREAS;

B) PROHIBITION OF THE USE OF CHEMICAL,
TOXIC OR EXPLOSIVE SUBSTANCES IN OR NEAR FISHING
AREAS;

C) REGISTRY OF ALL FISHING VESSELS WITH THE MARITIME
PORT AUTHORITY (CAPITANIA DOS PORTOS) AND WITH
SUDEPE;

D) IMPOSITION OF FEES AND TAXES FOR PERIODICAL
INSPECTIONS;

E) USE OF THE OFFICIAL FISHING LOGS TO BE
RETURNED TO SEDEPE AFTER EACH TRIP OR WEEKLY;
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F) PROHIBITION OF THE USE OF FISHING GEAR AND OR
OTHER EQUIPMENT CONSIDERED BY SUDEPE TO HAVE DESTRUC-
TIVE EFFECTS ON THE STOCKS;

G) PROHIBITION OF DISCHARGING OIL AND POLLUTING
WASTE.

4. AGREED MINUTES

THE DELEGATIONS OF THE GOVERNMENT OF THE
FEDERATIVE REPUBLIC OF BRAZIL AND THE GOVERNMENT OF
THE UNITED STATES OF AMERICA CONSIDER IT
EXPEDIENT TO RECORD THE POINTS SET FORTH BELOW

RELATING TO ARTICLES III, (3) AND ARTICLE VIII OF
THE AGREEMENT CONCERNING SHRIMP BETWEEN THE TWO
GOVERNMENTS INITIALED TODAY.

2. THE APPROPRIATE MEASURES TO CARRY OUT THE
PROVISIONS OF ARTICLE VIII CONERNING ARRANGEMENTS
BETWEEN THE FISHING ENTERPRISES OF BOTH PARTIES
WILL BE THE OBJECT OF CONSULTATIONS BETWEEN THE
TWO GOVERNMENTS DURING 1977, NOTWITHSTANDING ANY
PRIVATE UNDERSTANDINGS THAT THE REPRESENTATIVES
OF THE FISHING INDUSTRIES OF THE TWO COUNTRIES MAY
REACH DURING THE SAME PERIOD.

3. THE APPROPRIATE MEASURES TO CARRY OUT THE
PROVISIONS OF PARAGRAPH 3 OF ARTICLE III CONCERNING
AN EXPANDED CO-ORDINATED RESEARCH PROGRAM INCLUDING
INTER ALIA EXPLORATORY FISHING ACTIVITIES AND
TRAINING OF SCIENTISTS WILL BE THE OBJECT OF
CONSULTATIONS BETWEEN THE TWO GOVERNMENTS TO BE
HELD, AS SOON AS POSSIBLE, IN CONNECTION WITH THE
PERIODICAL MEETINGS OF SCIENTISTS AS PROVIDED FOR
IN THE SAME ARTICLE.

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